

Served: June 19, 1992

NTSB Order No. EA-3589

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of May, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

SE-10346

CARL F. BROWN,

Respondent.

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman issued in this proceeding on February 9, 1990, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed an order of the Administrator suspending respondent's private pilot certificate for 30 days on an allegation that he violated section 91.9 of the Federal Aviation Regulations

¹An excerpt from the hearing transcript containing the initial decision is attached.

("FAR"), 14 C.F.R. Part 91.²

The Administrator's order, which was filed as the complaint in this matter, alleged in pertinent part:

2. On December 11, 1988, you [respondent] were pilot in command of a Beech 24R aircraft, civil registration N9233S, on a flight with a passenger which landed at the Oxford, Massachusetts airport at approximately 11:30 a.m.

3. On said flight you landed on runway 20.

4. Runway 20 is 2200 feet in length.

5. You landed approximately two thirds of the way down runway 20.

6. At the time you landed the wind was approximately 15 knots out of the northwest creating a downwind landing situation.

7. As a result you were unable to stop the aircraft and ran off the end of the runway.³

²FAR section 91.9 provided at the time of the incident as follows:

"§ 91.9 **Careless or reckless operation.**

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³Respondent filed an answer to the complaint in which he asserted, as affirmative defenses, that he landed on the first one third of the runway; that a crosswind existed at the time of the landing and that the landing was not downwind; that if a tailwind did exist at the time of the landing, "...it was the result of a false indication of wind direction by one of the wind socks at Oxford Airport, and not as the result of carelessness on the part of the Respondent"; and "...the subject accident occurred as a result of lack of braking action owing to ice on the runway, which ice was not observable from the air, and which was not reported when Respondent telephoned the airport manager to obtain a report of field conditions before the subject flight."

The law judge found that the Administrator established the allegations contained in the complaint by a preponderance of the substantial, reliable, and probative evidence. Respondent asserts on appeal⁴ that the initial decision is erroneous as it is not supported by a preponderance of the evidence and that it contains prejudicial findings concerning his landing in snow and ice which were not allegations contained in the Administrator's complaint.⁵ Respondent also contends that the law judge erred in rejecting evidence concerning respondent's reliance on wind sock observations, rather than the Worcester Airport Automatic Terminal Information Service (ATIS).

Upon consideration of the briefs of the parties, and of the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. For the reasons that follow, we will deny respondent's appeal and affirm the initial decision.

The Administrator presented the testimony of a local flight instructor who was present at Oxford Airport at the time of the incident. The flight instructor testified that

⁴The Administrator has filed a brief in reply.

⁵Respondent claimed as an affirmative defense that he had no braking action due to ice on the runway. Under such circumstances, it was clearly appropriate for the law judge to consider factors concerning the weather conditions in his initial decision.

first he heard respondent's aircraft rolling down the runway; then, when he looked, he saw it proceed past the end of the runway where it hit a pole, and crossed a public road, and came to rest. As the witness ran towards the aircraft it made squealing noises, apparently from braking.

According to this witness, the runway was more than half covered with snow at the time of the incident.⁶ He admits he did not actually see the aircraft touch down, but he testified that after the incident, he walked up the runway to the point which he thought was the initial touchdown. He saw small tire tracks on the pavement starting with the main gear and then, shortly after, nose gear markings in the snow. He knew that the skid marks on the pavement and the markings in the snow were made by respondent's aircraft because the snow on the runway was virgin snow, and no other flights had operated at Oxford Airport that morning. He estimated that he first saw the aircraft approximately three-quarters of the way down the runway, 400 or 500 feet from the end. The tire marks in the snow were, in his opinion, just over the halfway point of the runway, approximately 1,300 feet down the 2,200 foot runway.

⁶According to the witness there was a dusting of snow between a half inch and one inch thick. The ground was only partially covered, but the snow was not blowing around very much. (TR-36). He described "ovals" of pavement showing through the snow.

The flight instructor also testified as to the wind conditions that day. He explained that there were three wind socks at Oxford Airport at the time of the incident. One was on top of the hangar at the south end of the field (Number 3 on Exhibit R-2),⁷ one was located just to the south end of the first taxiway (Number 2 on Exhibit R-2), and the last was just to the right of the approach end of the runway (Number 1 on R-2). This witness also testified that he had listened periodically to the ATIS reports and believed that the wind was generally picking up speed throughout the morning, out of the northwest. The ATIS report is taken from Worcester, which is just over seven nautical miles from Oxford Airport.

The Administrator's second witness was a student pilot who was also present at the airport. He saw the aircraft landing, and, in his opinion, it was coming in with a tailwind and going too fast to stop. He testified that he looked at the Number 2 wind sock as respondent landed, and it indicated a tailwind. This witness did not observe any snow blowing off or on the runway.

⁷The flight instructor admitted on cross-examination that wind sock Number 3 is generally considered unreliable because, in his experience, it is not in agreement with the other two wind socks by 30 to 45 degrees. However, he testified, it would not be the one most visible on approach; the Number 1 wind sock would be the one most often relied on during approach because it was the wind sock that was nearest to the approach end of the runway.

The FAA inspector who investigated this incident testified that in the course of his investigation, he interviewed witnesses who advised him that there was a very strong surface wind from the north-northwest that day. The inspector also sponsored the Surface Weather Observation taken at Worcester Airport which revealed the following: At 10:44, about an hour after the incident, winds were from 330 at 14 knots, with peak gusts of 24 knots; at 9:47, the winds were from 320 at 12 knots; at 8:44, the winds were 350 at 13 knots, and at 7:45, the winds were from 320 at 15 knots with peak gusts of 22 knots. According to the inspector, a pilot using this information would conclude that there would have been a tailwind component of between 9 and 19 knots for a landing on Runway 20 at Oxford Airport. A prudent pilot under such circumstances would land into the wind in order to maximize the headwind component, which would give him the slowest possible ground speed for a landing. The inspector concluded that it was careless for respondent to land on Runway 20. On cross-examination, the inspector was asked what he would do if he saw wind socks indicating a direct crosswind with an occasional headwind component⁸ which was at odds with the weather reported by Worcester ATIS. The inspector opined that he would choose the safest runway,

⁸Respondent never told the inspector there was a headwind component.

using all the available data, and he concluded that he would have landed to the north. If one wind sock was inconsistent with the other two wind socks and with ATIS, the inspector would have sought other information before making a decision to land. With regard to runway conditions, the inspector testified that he did not consider the light dusting of snow on the runway to be a significant detriment to braking.

Respondent's passenger on the day in question is also a pilot. He testified that he called to check the weather for respondent prior to the flight, and was told by the Oxford airport manager that there was a light snow on the runway and a crosswind. According to the passenger, after he gave this information to respondent, respondent agreed to fly him to Oxford and they agreed that they would decide if they could land when they arrived. They called Oxford enroute for advisories, but got no response. On approach, the passenger testified, the first wind sock he saw was Number 3, on the hangar, and it showed a crosswind. Coming around on downwind he saw wind sock Number 1, and it also indicated a crosswind, blowing from the west. He denies seeing a tailwind. According to the passenger, respondent landed "a third, maybe a quarter way down the runway."

According to respondent, the pre-flight information he received from ATIS and the Boston Pilots Automatic Telephone Answering Service (PATWAS) was that the weather was clearing.

His experience⁹ was that Worcester ATIS was not a clear indicator of weather in Oxford,¹⁰ so he had agreed with his passenger that they would not decide to land until they got to Oxford. When they approached the airport, respondent claims he saw two wind socks. He believes he looked at Number 1 first, and it was indicating "an absolutely direct crosswind. It was up and down. It was gusty..." He next saw wind sock Number 3. Initially, he felt it indicated a direct crosswind; when he turned on long base, however, that wind sock indicated somewhat of a headwind to Runway 20.¹¹ Respondent claims he saw no tailwind factor. It was not actually snowing at the time of landing, but he claims the snow on the runway was swirling from right to left. Finally, respondent insists that he landed on the first third of the runway and as the aircraft touched down, he claims he got hit by a gust. His speed was about 6 knots above normal landing

⁹Respondent had landed at Oxford on five prior occasions, and he considered it a "challenging" airport to land at because of frequent crosswinds.

¹⁰Respondent asserts that the law judge committed prejudicial error by excluding testimony concerning differences indicated by the wind socks at Oxford Airport and the Surface Weather Observations taken at Worcester Airport, as observed by a meteorologist subsequent to the incident. We see no reason why the law judge chose to exclude this testimony, since respondent's expert had already taken the stand and stated the basis for his opinion. Nonetheless, any error created by the exclusion of this testimony was harmless, as the law judge's conclusion that respondent landed long and downwind on the runway was supported by the testimony of the Administrator's percipient witnesses, infra.

¹¹Respondent's passenger did not corroborate this observation.

speed, because of the gusty winds. He hit his brakes and they did not work, and he overran the runway. On cross-examination, respondent admitted that according to Worcester ATIS, the wind was 330 degrees, gusting, and variable, and these figures meant that he should have landed on runway 02, not runway 20.

The law judge concluded that this incident was a result of a mistake of judgment on respondent's part, and he upheld the allegation of a violation of FAR section 91.9. The law judge found that respondent had in fact landed two-thirds down the runway, that it was a downwind landing, and that, as a result, respondent could not stop his aircraft. We have reviewed the entire record, and we have no reason to disturb the law judge's findings, which are based largely on his implicit credibility determination in favor of the Administrator's witnesses. In the Board's view, the evidence is sufficient to conclude that respondent landed long on the runway. Moreover, the fact that he was unable to slow his aircraft sufficiently after touchdown to avert an overrun, when considered in light of the Administrator's witnesses' testimony on wind conditions, lends support to the conclusion that he encountered a tailwind. Respondent knew that this was a short runway and he knew from the official weather observations that there likely would be crosswinds. Thus, he should have reasonably expected a quartering tailwind on

landing on Runway 20, and we concur with the law judge that under such circumstances, it was careless to land so far from the threshold of a short runway that did not afford him a headwind.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order and the law judge's initial decision and order are affirmed; and
3. The 30-day suspension of respondent's airman certificate shall begin 30 days after service of this order.¹²

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹²For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).